

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Cynthia Gilbert,

Plaintiff,

v.

Case No. 2:07-cv-87

Big Sandy Furniture, Inc.,

Defendant.

ORDER

By order dated June 26, 2007, this court referred the defendant's Motion to Dismiss or in the Alternative to Stay Proceedings and Compel Arbitration filed on April 12, 2007, to Magistrate Judge Terence P. Kemp to conduct any hearings, including evidentiary hearings, on the motion, and to submit to this court proposed findings of fact and recommendations for the disposition of the motion. The motion to dismiss was based on plaintiff's signature on an "Employee Acknowledgment" at the time of her hiring that any disputes concerning her employment would be submitted to arbitration in accordance with the terms of defendant's Dispute Resolution Plan ("the Plan").

Magistrate Judge Kemp held an evidentiary hearing on July 20, 2007, and issued a report and recommendation on September 6, 2007. He rejected plaintiff's objections to the Plan insofar as plaintiff argued: (1) that the Plan is illusory and lacks mutuality of obligation; (2) does not provide for a fair and impartial forum; (3) is unconscionable because she did not voluntarily waive her constitutional right to litigate her claims in court. However, he concluded that the evidence in the record was insufficient to determine the merits of plaintiff's fourth argument, namely, that

the agreement mandating arbitration was unenforceable because the cost provisions effectively deter plaintiff from enforcing her rights, and noted that plaintiff had not made a request to proceed as a pauper under the terms of the Plan, which, if granted, would render her fourth objection moot. Magistrate Judge Kemp therefore recommended that this branch of the motion to dismiss be denied, and that the action be stayed pending the evaluation of Dispute Resolutions, Inc. ("DSI") as to whether plaintiff qualifies as a pauper under the terms of the Plan. He recommended that the motion to dismiss be re-examined under Morrison v. Circuit City Stores, Inc., 317 F.3d 646 (6th Cir. 2003), in the event that DSI concluded that plaintiff is able to pay for mediation and arbitration. He further recommended that the motion to stay and to compel arbitration be granted.

No objections having been filed to the report and recommendation, the court hereby adopts report and recommendation (Doc. No. 26). Defendant's motion (Doc. Nos. 7 and 8) is granted in part and denied in part. The motion to dismiss is denied without prejudice to being renewed depending on the outcome of DSI's evaluation on whether plaintiff qualifies as a pauper under the Plan. The alternative motion to stay proceedings and to compel arbitration is granted.

Date: October 10, 2007

s/James L. Graham
James L. Graham
United States District Judge